

**REMARKS**

By this amendment, claims 1 and 4 are amended. Claims 2 and 3 are canceled. Claim 13 has been added. No new matter has been introduced. Claims 1-13 are pending. In light of same, and in light of the following remarks, allowance of all pending claims is respectfully requested.

**Specification**

The Examiner has objected to the disclosure because of certain informalities. Namely, on page 9, line 4, reference number 66 was used to identify a spherical bushing while reference number 76 was used on page 8, line 2, to identify a spherical bushing. Applicant thanks the Examiner for the helpful suggestions and has amended the specification to correct this typographical error. Additionally, it is noted that spindle 22 in line 10 of page 9 should be spindle 20. This typographical error has also been corrected herein. Reference is made to Fig. 3 for support of the above amendments.

**Rejections Under 35 U.S.C. § 112**

Claim 12 stands rejected under 35 U.S.C. § 112 as indefinite. The Examiner has taken the position that Claim 12 lacks a proper preamble in conformance with current office practice. Applicant notes that, as indicated in the Manual of Patent Examining Procedure, there is no set statutory form for claims. See MPEP § 608.01(m). Likewise, one or more claims may be presented in dependent form, namely, referring back to and further limiting another claim or claims in the same application. See MPEP § 608.01(i). As can be seen, claim 12 meets the requirements of a dependent claim, namely, it adds limitations to a claim to which it refers, namely, claim 8. Accordingly, Applicant respectfully requests the Examiner's rejection of claim 12 be withdrawn.

**Rejections under 35 U.S.C. §102**

Claims 8 and 12 stand rejected under 35 U.S.C. 102(b) as being anticipated by Pennington et al., United States Patent No. 1,368,652.

Claim 8 (and its dependent claim 12) is directed to a track assembly comprising a frame having a first end and a second end; a first idler wheel operably associated with the frame at the first end of the frame; a link pivotally connected at the second end of the frame at a pivot member to pivot in a generally vertical plane about a pivot axis defined by said pivot member, an imaginary dividing plane being defined by a vertical extension of the pivot axis; a second idler wheel operably provided on the link; a tensioning device between the frame and the link to maintain an axis of the second idler wheel below the pivot member and on a side of the imaginary dividing plane opposite from the first idler wheel; and a continuous track provided around the first and second idler wheels, the continuous track having a tread portion formed by a lower span of the continuous track.

Pennington covers a track belt supporting and tightening mechanism. As can be seen in Pennington, the axis of the idler wheel is located above the pivot member, rather than below the pivot member. See Fig. 2. Pennington discloses that “the front idler 14 is rotatably mounted on a stub axle 17 carried by and projecting outward from a bent lever 20, which lever at its rear end is rotatably mounted on a stud 21 carried by a bracket 22 fixed to the main frame. From the pivot stud 21, this lever extends upward and forward at an angle substantially as shown to the point at which the stub axle 17 is secured. From this point this lever extends in a substantially vertical direction.” See Column 2, lines 64-74 (emphasis added).

To anticipate, a single prior art reference must disclose each element of the claim under consideration. W.L. Gore & Assocs. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983). Contrary to the Examiner’s conclusions, the teachings of Pennington do not disclose or suggest all of the limitations of claim 8 or its dependent claim 12. As indicated, Pennington discloses an axis of the idler wheel that is located above the pivot member, rather than below the pivot member as recited in claim 8. Applicant respectfully submits that this is an important distinction because the orientation of the axis of the idler wheel relative to the pivot point of the link creates an “over-center” orientation in the presently claimed embodiment that tends to add additional tension to the belt as additional weight is added to the frame. Pennington is oriented the opposite direction and would not have the same advantages. Accordingly, Pennington does not teach or suggest Applicant’s claimed track assembly as set forth in claim 8, or claim 12 which is dependent upon claim 8.

**Rejections under 35 U.S.C. §103**

Claims 1, 2, 7 and 9 stand rejected under 35 U.S.C. § 103(a) as obvious over Pennington et al., United States Patent No. 1,368,652 in view of Nakamura, United States Patent No. 3,951,483.

Claim 1 has been amended to incorporate the limitations of claim 3. Claim 1 (as amended) covers: a track assembly comprising a frame; a first elongated spindle tiltably connected to the frame to tilt from side to side; a second elongated spindle tiltably connected to the frame to tilt from side to side; a first idler wheel rotatably mounted to the first elongated spindle wherein the first spindle is provided with an alignment mechanism for selectively varying an alignment of the first idler wheel; a second idler wheel operationally associated with the frame, wherein the second idler wheel is rotatably mounted to the second elongated spindle; and a continuous track provided around the first and second idler wheels, the continuous track having a tread portion formed by a lower span of the continuous track.

As indicated by the Examiner, claims 3-6 and 10-11 were deemed allowable if rewritten in independent form. Claim 1 has been amended to incorporate the features of claim 3. Accordingly, claim 1 should now be allowable over the prior art of record.

Claim 2 has been cancelled. Claim 7 is dependent upon claim 1 and includes all the limitations of claim 1 therein. As claim 1 is allowable, claim 7 should, likewise, be considered allowable. Applicant submits that the Examiner's rejection is now moot with respect to claims 1, 2 and 7 and requests that the Examiner's rejection be withdrawn.

With respect to Claim 9, Claim 9 is dependent upon Claim 8 and includes all the limitations of Claim 8 therein.

The content of claim 8 is disclosed above. Claim 9 adds the feature of mounting the first and second idler wheels on tiltable spindles to permit the first and second idler wheels to tilt with the tread portion as the track assembly is moved across uneven terrain.

The teachings of Pennington are described above. Nakamura discloses a conical roller bearing. This roller bearing is applied to a semi-floating rear axle of a motor vehicle.

In determining obviousness under 35 U.S.C. § 103(a), the Examiner must consider the claimed invention as a whole. MPEP § 2141.02. Furthermore, the prior art must teach or suggest all the claim limitations. MPEP § 2142; 2143. As indicated hereinabove, the teachings of Pennington do not disclose or suggest all the limitations of claim 8. Claim 9 is dependent upon claim 8 and includes all the limitations of claim 8 therein. Pennington discloses an axis of the idler wheel that is located above the pivot member, rather than below the pivot member. The orientation of the axis in Applicant's device, namely, the axis of the idler wheel relative to the pivot point of the link, creates an over-center orientation in the presently claimed embodiment that adds additional tension to the belt as additional weight is added to the frame. Pennington does not disclose or suggest such a orientation as the axis is facing the opposite direction and would not result in a similar tensioning of the belt. Moreover, Nakamura does not teach or suggest such a feature. Accordingly, Pennington cannot be combined with Nakamura, nor can either reference be used individually, to show Applicant's entire claimed invention, including the features described above.

### **New Claim 13**

New claim 13 has been added to rewrite claim 12 in independent form. Applicant submits that no new matter has been added and that the arguments set forth above apply equally to claim 13. Accordingly, entry and allowance of claim 13 is respectfully requested.

**CONCLUSION**

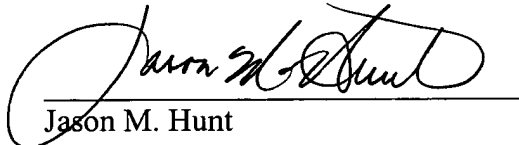
Taken together, Applicant respectfully submits that the device claimed by the instant application contains novel properties not disclosed by the prior art references, and that independent Claims 1, 8 and 13, and the claims dependent thereon are not anticipated nor obvious over the cited references. Moreover, Applicant's amendments herein place this Application in condition for allowance. Accordingly, withdrawal of the Examiner's rejections is respectfully requested.

In view of the above amendments and remarks, it is respectfully submitted that this Application is in condition for allowance and such action is earnestly solicited. However, should the Examiner have any further point of objection, the Examiner is urged to contact the undersigned so that a mutual agreement with respect to claim limitations can be reached.

Respectfully submitted,

Date: \_\_\_\_\_

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